

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

HERON POINTE APARTMENTS, LLC,
Plaintiff,
v.
GEORGE MACK, et al.,
Defendants.

) Case No.: 1:22-cv-0602 JLT SAB
) ORDER SUA SPONTE REMANDING CASE TO
) FRESNO COUNTY SUPERIOR COURT AND
) DENYING DEFENDANTS' MOTIONS TO
) PROCEED IN FORMA PAUPERIS AS MOOT
) (Docs. 1, 2, and 3)
)
)

Heron Pointe Apartments initiated this action against George Mack and Jasmine Wingfield by filing a complaint for unlawful detainer in Fresno County Superior Court, Case No. 22CECL01470.¹ (Doc. 1 at 7-10.) On May 20, 2022, the defendants filed a Notice of Removal (Doc. 1) and motions to proceed before this Court *in forma pauperis* (Docs. 2, 3). For the reasons set forth below, the Court finds it lacks subject jurisdiction over the action and the matter is **REMANDED** to Fresno County Superior Court.

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¹ The Court may take notice of facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993). The accuracy of the Court's records cannot reasonably be questioned, and judicial notice may be taken of court records. *Mullis v. United States Bank Ct.*, 828 F.2d 1385, 1388 n.9 (9th Cir. 1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), *aff'd* 645 F.2d 699 (9th Cir. 1981); *see also Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989); *Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980). Therefore, judicial notice is taken of the docket and complaint filed in Case No. 22CECL01470, which is attached to the Notice of Removal.

1 **I. Removal Jurisdiction**

2 Pursuant to 28 U.S.C. § 1441(a), a defendant has the right to remove a matter to federal court
3 where the district court would have original jurisdiction. *Caterpillar, Inc. v. Williams*, 482 U.S. 286,
4 392 (1987). Specifically,

5 Except otherwise expressly provided by Act of Congress, any civil action brought in a
6 State court of which the district courts of the United States have original jurisdiction,
7 may be removed by the defendant or defendants, to the district court of the United
States for the district and division embracing the place where such action is pending.

8 28 U.S.C. § 1441(a). District courts have “original jurisdiction of all civil actions arising under the
9 Constitution, laws, or treaties of the United States.” *Id.* at § 1331.

10 A party seeking removal must file a notice of removal of a civil action within thirty days of
11 receipt of a copy of the initial pleading. *Id.* at § 1446(b). Removal statutes are to be strictly construed,
12 and any doubts are to be resolved in favor of state court jurisdiction and remand. *See Gaus v. Miles*,
13 980 F.2d 564, 566 (9th Cir. 1992). The party seeking removal bears the burden of proving its
14 propriety. *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996); *Abrego v. Dow Chem. Co.*, 443 F.3d
15 676, 683-85 (9th Cir. 2006); *see also Calif. ex. rel. Lockyer v. Dynegy, Inc.*, 2274 F.3d 831, 838 (“the
16 burden of establishing federal jurisdiction falls to the party invoking the statute”). If there is any doubt
17 as to the right of removal, “federal jurisdiction must be rejected.” *Duncan*, 76 F.3d at 1485.

18 The Court has “a duty to establish subject matter jurisdiction over [a] removed action *sua
sponte*, whether the parties raised the issue or not.” *United Investors Life Ins. Co. v. Waddell & Reed,
Inc.*, 360 F.3d 960, 967 (9th Cir. 2004); *see also Kelton Arms Condo. Homeowners Ass’n v. Homestead
Ins. Co.*, 346 F.3d 1190, 1192-93 (9th Cir. 2003) (noting a distinction between procedural and
jurisdictional defects and holding a “district court *must* remand if it lacks jurisdiction”). Thus, a court
“can, in fact must, dismiss a case when it determines that it lacks subject matter jurisdiction, whether or
not a party has a filed a motion.” *Page v. City of Southfield*, 45 F.3d 128, 133 (6th Cir. 1995).

25 **II. Discussion and Analysis**

26 The determination of subject matter jurisdiction “is governed by the ‘well-pleaded complaint
rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the
27 face of the plaintiff’s properly pleaded complaint.” *Caterpillar*, 482 U.S. at 392; *see also California v.*

United States, 215 F.3d 1005, 1014 (9th Cir. 2000). “It does not suffice to show that a federal question lurks somewhere inside the parties’ controversy, or that a defense or counterclaim would arise under federal law.” *Vaden v. Discover Bank*, 556 U.S. 49, 70 (2009). Instead, the complaint must establish “either that [1] federal law creates the cause of action or that [2] the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold & Easement*, 524 F.3d 1090, 1100 (9th Cir. 2008) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)).

Significantly, the only cause of action identified by Heron Pointe Apartments in the complaint is unlawful detainer. (See Doc. 1 at 7-10.) An unlawful detainer action does not arise under federal law, but arises instead under state law. See *Wells Fargo Bank v. Sherzad*, 2022 WL 913251, at *1 (E.D. Cal. Mar. 29, 2022) (a complaint for unlawful detainer “relies solely on California state law and does not state any claims under federal law”); *Fannie Mae v. Suarez*, 2011 WL 13359134, at *2 (E.D. Cal. July 27, 2011) (“Unlawful detainer actions are strictly within the province of state court”). Thus, Heron Pointe Apartments has not raised a claim that invokes federal subject matter jurisdiction.

III. Conclusion and Order

Because there is no federal question appearing in the complaint, the Court cannot exercise jurisdiction and the action must be remanded to the state court. *See* 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded”). Accordingly, the Court **ORDERS**:

1. The matter is **REMANDED** to the Superior Court of Fresno County for lack of subject matter jurisdiction.
 2. Defendants' motions to proceed *in forma pauperis* (Docs. 2, 3) are denied as moot.
 3. The Clerk of Court is **DIRECTED** to close this matter.

IT IS SO ORDERED.

Dated: May 22, 2022

Jennifer L. Thurston
UNITED STATES DISTRICT JUDGE